

**IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE**

IN RE EDWARD JEROME HARBISON) HAMILTON COUNTY
) No. M1986-00093-SC-OT-DD
) *Oral Argument Requested*

**RESPONSE OPPOSING THE STATE’S MOTION FOR AN EXECUTION DATE,
REQUEST FOR A MODIFIED SENTENCE AND, ALTERNATIVELY,
REQUEST FOR A CERTIFICATE OF COMMUTATION**

Comes now Edward Jerome Harbison, through undersigned counsel, pursuant to TENN. SUP. CT. R. 12.4(A), and respectfully requests that the State’s motion, asking this Court to set a date for Mr. Harbison to be executed, be denied.

“A death sentence that is dead wrong is no less so simply because its deficiency is not uncovered until the eleventh hour.”¹

The facts of Mr. Harbison’s case do not warrant the ultimate punishment. He stands alone in facing the death penalty based only on the concurrent commission of a property crime.²

By law, Mr. Harbison’s death sentence is “disproportionate to the punishment imposed on others convicted of the same crime.”³ The inability to identify another death row inmate with only a single non-violent aggravating factor proves the death sentence in this case is

¹ *Evans v. Muncy*, 498 U.S. 927, 931 (1990) (Marshall, J., dissenting from denial of stay of execution). *See also State v. Moore*, 273 Neb. 495, 497, 730 N.W.2d 563, 564 (2007) (*sua sponte* reconsidering setting an execution date, because “every court has the inherent power to control the execution of its orders or processes, to the end of preventing an abuse of them.”), *citing ex parte State ex rel. Attorney General*, 150 Ala. 489, 43 So. 490 (1907).

² *See* Appendix 1: Summary of Tennessee Death Row Cases.

³ *State v. Bland*, 958 S.W.2d 651, 662 (Tenn. 1997) (quoting *Pulley v. Harris*, 465 U.S. 37, 42-43 (1984)).

disproportionate.⁴ While the validity of the sole aggravator in this case was previously upheld as a legitimately narrow basis for imposing the death penalty, even at that time, a similar case was not identified.⁵ This Court may now revisit the propriety of the death sentence because new, indisputable facts show that for over 40 years there has not been another death sentence imposed in a case like Mr. Harbison's.⁶

This case also requires a fresh look because a person should not be executed without a judicial review for proportionality that includes cases involving similar offenses in which the jury

⁴ A death sentence is disproportionate if a case is "plainly lacking in circumstances consistent with those in cases where the death penalty has been imposed." *Bland*, 958 S.W.2d at 668. *See also id.* at 665-67 (proportionality analysis compares a case with other cases involving similar defendants and similar crimes).

⁵ 704 S.W.2d 314, 320 (Tenn. 1986). The prior proportionality analysis also contains clear *Middlebrooks* error. *State v. Middlebrooks*, 840 S.W.2d 317, 345-46 (Tenn. 1992). Guilt-phase proof of felony murder was used to conclude the aggravating circumstance was proven beyond a reasonable doubt.

⁶ TENN. CODE ANN. § 40-27-106 (power to certify a case for commutation). The full power of this Court exists in every case that reaches it. *State ex rel. Conner v. Herbert*, 154 S.W. 957, 963 (1912). The scope of the Court's power is vast, as the State Legislature has conferred "full, plenary and discretionary power upon" it. TENN. CODE ANN. § 16-3-504. "[I]t is the statutory and inherent obligation of this Court to correct" a "disproportionate application of the death penalty." *State v. Pritchett*, 621 S.W.2d 127, 140 (Tenn. 1981). "In addition to its other authority regarding correction of errors," in reviewing a death sentence, the Court is authorized to "[m]odify the punishment to imprisonment for life without possibility of parole or imprisonment for life." TENN. CODE ANN. § 39-13-206(d)(2). There are "no restrictions ... placed on this authority under the statute...." *State v. Shepherd*, 902 S.W.2d 895, 906 (Tenn. 1995). *See also Bowen v. State*, 488 S.W.2d 373, 377-78 (Tenn. 1972) ("Under these principles from the *Corlew* opinion [180 S.W.2d 900 (1955)] it is conceivably within the power of this Court to reduce the death penalty to ninety-nine years"); *Collins v. State*, 550 S.W.2d 643, 647-49 (Tenn. 1977) (reversing death sentence and remanding for imposition of term of imprisonment); *see also id.* at 649 (Henry, J., concurring in part, dissenting in part) ("We, therefore, are not limited to the certificate as set forth in the statute, but, independent of the statute, in a proper case, may make our determination that executive commutation is appropriate, and communicate this determination to the Governor.")

imposed a sentence less than death.⁷ Invoking fundamental principles of the Supreme Court's death penalty jurisprudence, Justice Stevens dissented from the imposition of a death sentence in a case where that review was not done. He iterated "that the Eighth Amendment cannot tolerate the infliction of a death sentence under a legal system that permits this unique penalty to be wantonly and freakishly imposed,"⁸ and warned, "there is a special risk of arbitrariness in cases that involve black defendants and white victims."⁹

Race was likely a factor in singling out Mr. Harbison for the death penalty in this 1983 burglary case that unintentionally ended with the death of a 62-year-old white woman.¹⁰ No

⁷ *Walker v. Georgia*, 129 S.Ct. 453, 455-56 (2008) (Stevens, J., statement respecting the denial of the petition for writ of certiorari); *State v. Reid*, 164 S.W.3d 286, 323-25 (Tenn. 2005) (Birch, J., concurring and dissenting) (proportionality review should compare factually similar cases involving sentences less than death); *State v. Black*, 815 S.W.2d 166, 194 (Tenn. 1991); (Reid, C.J., concurring and dissenting) ("The comparative proportionality analysis mandated by the statute requires that this Court examine on a statewide basis the sentences imposed in all first degree murder cases and, as necessary, in factually similar homicides."); *State v. Dicks*, 615 S.W.2d 126, 140-42 (Tenn. 1981) (Brock, C.J., dissenting) (citation and quotations omitted) (concluding that "[i]t cannot be said that only the worst offenders [a]re executed" and the death penalty, "inevitably, [] is arbitrarily and capriciously imposed" due to the additional discretionary powers exercised by police officers, prosecutors, defense counsel, trial judges and Governors).

⁸ *Id.* at 454, citing *Furman v. Georgia*, 408 U.S. 238, 310 (1972) (Stewart, J., concurring).

⁹ *Id.* at 455, citing *McClesky v. Kemp*, 481 U.S. 279 (1987); *Turner v. Murray*, 476 U.S. 28, 33-37 (1986).

¹⁰ Defendants are more likely to be charged with capital murder and get the death penalty if the victim is white. U.S. Gen. Accounting Office, Report to Senate and House Committees on the Judiciary, *Death Penalty Sentencing: Research Indicates Pattern of Racial Disparities*, GAO/GGD-90-57 p.5 (Feb. 1990), available at <http://archive.gao.gov/t2pbat11/140845.pdf>. African Americans who are convicted of killing Whites are significantly more likely to be executed on death row than other offenders. Jacobs, Qian, Carmichael & Kent, *Who Survives on Death Row? An Individual and Contextual Analysis*, Am. Sociological Rev., Vol.72, No.4, p.610-32 (Aug. 2007). For example, since 1916 Tennessee has executed 86 black inmates and 45 white inmates. <http://www.tennessee.gov/correction/media/tnexecutions.html>. Race also impacts conviction rates; when death is the maximum available sentence, respondents presented

other factor distinguishes this case from 44 fatal burglary cases in Tennessee where a death sentence was not imposed.¹¹ However, it is never too late for this Court to right a wrong, especially where TENN. SUP. CT. R. 12.4 contemplates consideration of any and all grounds why no execution date should be set.¹² Reliance upon only a concurrent burglary to execute Mr. Harbison today – given that no other Tennessean has received the same sentence for the same conduct – would be entirely unjust and violates the Eighth Amendment.

In *Evans v. Muncy*, later arising evidence “invalidate[d] the sole aggravating circumstance on which the jury based its death sentence.”¹³ Justice Marshall dissented from the Supreme Court’s denial of a stay of execution. He could not condone the Court’s inaction because it “endorse[d] the State’s conclusion that it is entitled to look the other way when late-arriving evidence upsets its determination that a particular defendant can lawfully be executed.”¹⁴

Here, the State requests a date for Mr. Harbison’s execution because the three-tier judicial

with black defendants were significantly more likely to convict (80%) than were those with white defendants (55.1%). Glaser, Martin & Kahn, *Possibility of Death Sentence Has Divergent Effects on Verdicts for Black and White Defendants* (Univ. of Cal., Berkeley June 24, 2009), available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1428943. See also *Discrimination Against Blacks Linked To Dehumanization* (Stanford Univ. Feb. 8, 2008), available at: <http://www.sciencedaily.com/releases/2008/02/080207163811.htm>.

¹¹ See Appendix 2: Summary of Tennessee Fatal Burglary Cases.

¹² See *supra* note 6; see also *Van Tran v. State*, 6 S.W.3d 257, 264-65 (Tenn. 1999) (explaining this Court’s power to adopt rules “when an issue arises for which no procedure is otherwise specifically prescribed.”).

¹³ 498 U.S. 927, 929 (1990).

¹⁴ *Id.* at 930. See also *Moore*, 273 Neb. at 499, 730 N.W.2d at 565-56 (*sua sponte* entering a stay of execution and stating, “[w]e simply are not permitted to avert our eyes from the fairness of a proceeding in which a defendant has received the death sentence.”) (quoting *State v. Reddish*, 181 N.J. 553, 603, 859 A.2d 1173, 1203 (2004)).

review process is complete. However, it overlooks extenuating circumstances showing the death sentence is grossly disproportionate because reliance upon the one fact – that the killing occurred during a burglary – has resulted in an aberrant and disproportionate death sentence. Accordingly, and for the additional reasons that follow, no execution date should be set.

**Additional reasons to deny the motion for an execution date
based upon the fact that Mr. Harbison’s conduct is not in the category
of “the worst of the worst crimes” deserving of the death penalty.**

(1) Mr. Harbison’s death sentence is disproportionate to the punishment received by the other suspects of this crime; (2) the passage of time has proven Mr. Harbison’s death sentence is disproportionate to the lesser punishments received in all other fatal burglary cases; (3) a comparison of the recently commuted sentences of Michael Boyd and Gaile Owens shows that Mr. Harbison is as worthy or more worthy of a sentence less than death; (4) the passage of time has proven Mr. Harbison’s case is lacking in circumstances consistent with those in cases where the death penalty has been imposed; and, (5) a jurist at every point in time of review has questioned the propriety of the death sentence for Mr. Harbison.

The following charts illustrate each of these reasons why no execution date should be set:

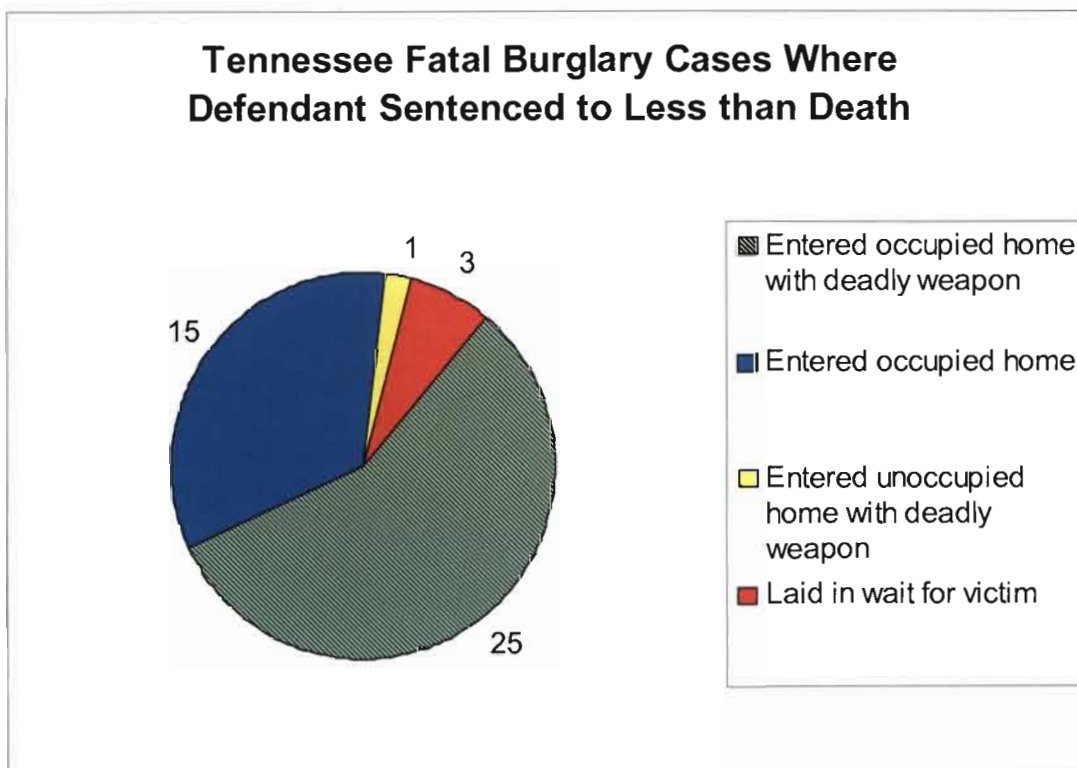
(1) Mr. Harbison's death sentence is disproportionate to the punishment received by the other suspects of this crime

	Edward Harbison 704 S.W.2d at 319	David Schreane Appendix 3	Ray Harrison Appendix 4
Punishment received	Death	Six years in prison	None - not charged
Role	Co-defendant	Co-defendant	Primary suspect
Criminal history	None - jury instructed on statutory mitigator of no significant history of criminal activity	Robbery (2) Burglary (4) Grand Larceny (2) Child Abuse (1) Possession of Burglary Tools (1)	Vehicle Theft (1) Burglary (1) Grand Larceny (2) Buy/Receipt of Stolen Property (2)

(2) Mr. Harbison's death sentence is disproportionate to the punishment received by others who committed murder during a burglary

"[T]he culpability of the average murderer is insufficient to justify the most extreme sanction available to the State."¹⁵

- Tennessee presently has at least 44 prisoners serving sentences who were convicted of a homicide that occurred during a home burglary. Unlike Mr. Harbison, the majority entered a home armed with a deadly weapon or while a home was occupied, or both.¹⁶
- Out of 88 Tennessee inmates currently on death row and those executed since 1977, Mr. Harbison is the only one whose death sentence is based entirely on the fact that the murder was committed during the course of a burglary.¹⁷



¹⁵ *Atkins v. Virginia*, 536 U.S. 304, 319 (2002).

¹⁶ See Appendix 2: Tennessee Fatal Burglary Cases Where Defendant Sentenced to Less Than Death.

¹⁷ See Appendix 1: Summary of Tennessee Death Row Cases.

(3) Mr. Harbison's sentence of death is disproportionate to the commuted sentence of Michael Boyd

On September 14, 2007, Governor Bredesen determined that substantial and unresolved doubts remained about whether the jury would have imposed the death sentence on Michael Joe Boyd had they known all of the facts. Given the inadequate legal representation that Mr. Boyd received and the inability of the judicial system to address these problems, the Governor decided that commutation of Mr. Boyd's sentence to life imprisonment without parole was appropriate.

Mr. Harbison's case has as much, if not more, merit as Mr. Boyd's. The similarities between the two are striking, and what differences exist strongly favor a reduced sentence for Mr. Harbison.

Differences	Edward Harbison	Michael Boyd
Prior crimes	No prior criminal record.	Prior second degree murder conviction; was on parole at the time he committed capital murder.
Felony committed during which a murder occurred	Burglary; traditionally a non-violent, property crime.	Robbery; an inherently violent crime against persons.
Premeditation	No weapon taken to the burglary; the victim was hit with a vase when she surprised Mr. Harbison and he thought she was reaching for a gun.	Held a loaded gun to one victim's face and said, "I want your money or I'm going to kill you." Shot another victim five times, killing him.
Jury instructions	Convicted of premeditated murder under an erroneous jury instruction, now forbidden from use. <i>State v. Brown</i> , 836 S.W.2d 530 (Tenn. 1992) (courts cannot give the "in an instant" instruction used in Mr. Harbison's case)	Jury received a proper instruction on premeditation.
Claims barred from court review	Ineffective assistance of counsel. Exculpatory evidence withheld.	Ineffective assistance of counsel.

State v. Harbison, 704 S.W.2d 314 (Tenn. 1986) // *State v. Boyd*, 797 S.W.2d 589 (Tenn. 1990)

(3), cont., Mr. Harbison's sentence of death is disproportionate to the commuted sentence of Michael Boyd

Similarities with Michael Boyd	Edward Harbison
Trial counsel did not present a case for life during the penalty phase of trial.	Trial counsel presented 44 lines of penalty phase testimony from Mr. Harbison's mother and a 7-page closing argument. Trial counsel did not introduce a wealth of available mitigation evidence, since they failed to conduct a meaningful investigation of the facts.
The courts could not review a claim of attorney ineffectiveness because of procedural barriers.	The courts repeatedly ruled Mr. Harbison's claim of ineffective performance by his trial attorneys was waived at the motion for new trial and neither the claim nor the mitigating evidence that should have been considered by the jury could be reviewed directly by the courts.
The facts of the case were not egregious and prompted the prosecutor initially to offer a plea bargain of imprisonment.	Mr. Harbison's attorneys, before going to trial, had been asked by the prosecution to initiate a plea deal and offered a plea of life imprisonment on the day of trial.
There was only one aggravating circumstance; that the murder took place during the commission of a felony (robbery).	The only aggravating circumstance in Mr. Harbison's case was that the murder took place during the commission of a felony (burglary) which, today, could not support a death sentence under state law because the same felony was used to secure the felony murder conviction.
Mr. Boyd's accomplice to the robbery was acquitted of murder.	Mr. Harbison's co-defendant pleaded guilty to second degree murder and served only six years in prison. A white man, who was a prime suspect in the case and admitted his presence during the crime, was never charged.
Mr. Boyd was a model prisoner.	Mr. Harbison has demonstrated exemplary behavior throughout his incarceration.

(3), cont., Mr. Harbison's sentence of death is disproportionate to the commuted sentence of Gaile Owens

Mr. Harbison's case has as much, if not more, merit for commutation as Ms. Owens' case.

On July 14, 2010, Governor Bredesen cited Gaile Owens' "extraordinary sentence compared to similar Tennessee cases" and commuted her death sentence to life in prison with 1,000 days of sentence reduction credits. Other factors relied upon by the Governor were that Owens could not plead guilty because her co-defendant refused to do so, and, there were unresolved allegations supporting battered woman syndrome.

	Gaile Owens	Edward Harbison
Premeditation	Owens solicited several men before her co-defendant accepted the offer and killed her husband.	No weapon taken to the burglary; the victim was hit with a nearby vase when she surprised Mr. Harbison and he thought she was reaching for a gun.
Manner of victim's death	Gary Owens died from 21 blows to the head with a tire iron. He suffered extensive defensive wounds to his hands.	Mr. Harbison testified he struck the victim with a nearby marble vase two times and the medical examiner testified it was three blows.
Aggravating circumstance(s)	<u>Two</u> : Murder-for hire, and, the murder was heinous, atrocious and cruel.	<u>One</u> : The murder took place during the commission of a felony (burglary).
Prosecutor would have accepted a life sentence	Prosecutor offered Owens and co-defendant a life sentence contingent on both accepting the deal.	Mr. Harbison was offered a plea of life imprisonment on the day of trial.
Evidence not considered by the jury	Allegations of domestic violence and emotional abuse that, while inconclusive, raise the possibility that Owens suffered post-traumatic stress disorder, then known as battered woman syndrome.	Mr. Harbison's traumatic life history and cognitive impairments, including borderline mental retardation, were not presented during his trial. Undisclosed police records undermine confidence in Mr. Harbison's guilty verdict because the evidence could have supported a colorable defense.

Owens v. Guida, 549 F.3d 399 (6th Cir. 2008);
Certificate of Commutation

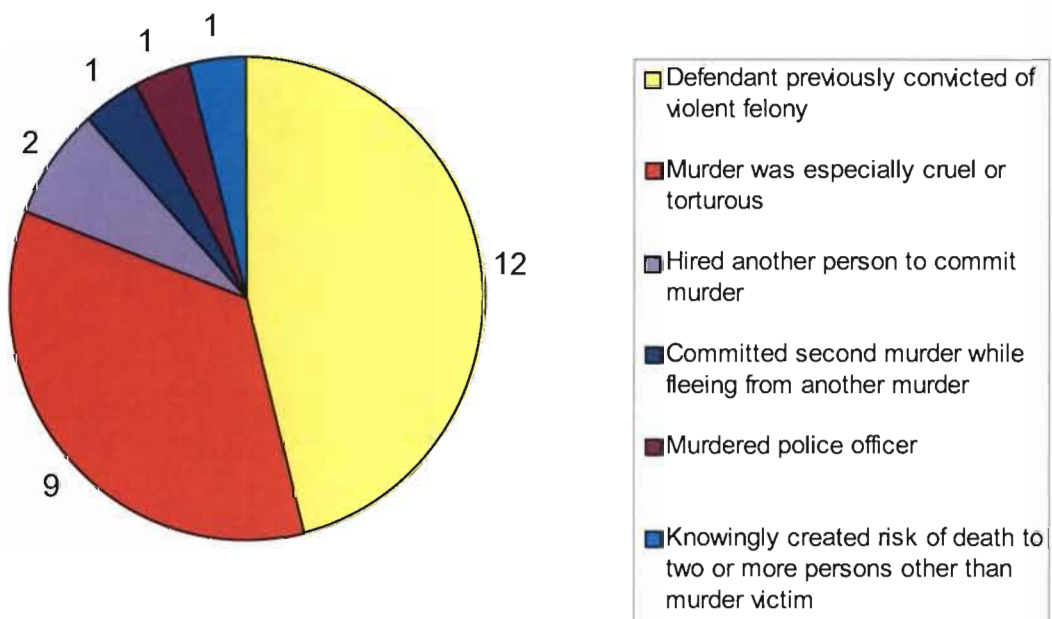
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State v. Harbison, 704 S.W.2d 314 (Tenn. 1986);
Harbison v. Bell, 129 S.Ct. at 1491

(4) Mr. Harbison's case is lacking in circumstances consistent with those of other Tennessee death row inmates

Mr. Harbison is the only death row inmate facing execution on the basis that the murder occurred during the commission of a property crime. For other death row inmates whose sentences rest upon one aggravating factor, that factor involves violence, depravity and/or premeditation.¹⁸

TN Death Row Inmates Whose Convictions Rest Upon One Aggravating Factor



¹⁸ See Appendix 5: Summary of Tennessee Death Row Cases Where The Sentence Is Supported By One Aggravating Circumstance.

(5) A jurist at every stage of review has questioned the propriety of the death sentence for Mr. Harbison

Mr. Harbison’s trial counsel, presently a federal magistrate judge, testified that the information he didn’t present to the jury about Mr. Harbison’s life history, but later learned about, was “*disturbing.*” He said, “*I would certainly hope someone would be around to correct it. ... I hope the system will straighten that out.*”¹⁹

<p>State Court 704 S.W.2d at 320, (citing <i>State v. Dicks</i>, 615 S.W.2d 126, 132, 136 (Tenn. 1981))</p>	<p>Chief Justice Brock, dissenting as to sentence: He warned in many cases, including this one, that “[t]he utter finality of the death penalty may cruelly frustrate the cause of justice” because “[o]nce the prisoner has been put to death by the state there can be no relief granted although later developments in the evidence of the case ... may show, conclusively, that the penalty was mistakenly inflicted.” He dissented from the death penalty because it was imposed arbitrarily and not imposed upon only the worst offenders.</p>
<p>Federal Court 408 F.3d at 846</p>	<p>Judge Clay, dissenting as to conviction: The withheld police “file denied Harbison a fair trial and demonstrates that his guilty verdict is unworthy of confidence.”</p>
<p>United States Supreme Court 129 S.Ct. at 1491</p>	<p>Justice Stevens, writing for a 7-2 majority: Information obtained after trial “may provide the basis for a persuasive clemency application. Harbison’s ... life history and cognitive impairments [were] not presented during his trial or appeals. ... One Court of Appeals judge concluded that the nondisclosure of the [police] records ‘undermine[d] confidence in Harbison’s guilty verdict’ because the evidence ... could have supported a colorable defense that a third party murdered the victim and that Harbison’s codefendant falsely implicated him. Although the Court of Appeals concluded that Harbison’s <i>Brady</i> claim was procedurally defaulted, the information contained in the police records could be marshaled together with information about Harbison’s background in a clemency application....”</p>

¹⁹ See Appendix 6: Post-conviction transcript p.94-95.

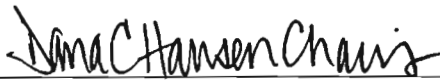
Request for Relief

Wherefore, for the above-stated reasons, Mr. Harbison prays that the Court decline to schedule his execution. He respectfully requests this Court to exercise its inherent authority and/or that authority conferred upon it by the State Legislature and modify his death sentence to a life sentence.²⁰

Alternatively, should the Court designate a day for Mr. Harbison's execution, it is respectfully requested that the Court certify to Governor Bredesen that there are extenuating circumstances attending this case and that the punishment ought to be commuted.

Respectfully submitted,

FEDERAL DEFENDER SERVICES
OF EASTERN TENNESSEE, INC.

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²⁰ See e.g., *supra* notes 1, 6 and 14 (presenting authority for this Court's power to commute or modify a death sentence which was not discussed in *State v. Owens*, No. M1988-00125-SC-DPE-DD, order of April 19, 2010).

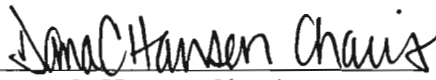
²¹ Pursuant to TENN. SUP. CT. R. 12.4(B), Dana C. Hansen Chavis, as attorney of record, requests notification of orders or opinions of the Court by facsimile at (865) 637-7999.

CERTIFICATE OF SERVICE

I, Dana C. Hansen Chavis, hereby certify that a true and correct copy of the foregoing was sent via facsimile and overnight mail to:

Jennifer L. Smith
Associate Deputy Attorney General
Office of the Attorney General
425 Fifth Avenue North
Nashville, TN 37243
E-mail: Jennifer.Smith@ag.tn.gov
Fax: (615) 532-7791

on this the 2nd day of September, 2010.


Dana C. Hansen Chavis
Assistant Federal Community Defender

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Appendix 6	<i>Harbison v. State</i> , Chattanooga Criminal Court, Division II, No. 171319. Post-conviction transcript p.94-95, testimony of William B. Mitchell Carter.

Appendix 1

Summary of Tennessee Death Row Cases

SUMMARY OF TENNESSEE DEATH ROW CASES

The following case summaries represent all Tennessee inmates currently on death row or executed since the death penalty was reinstated in Tennessee in 1977.

** Denotes cases involving only one aggravating factor.*

≈ Denotes cases in which the execution has been carried out.

- *≈ State v. Alley*, 776 S.W.2d 506 (Tenn. 1989) (defendant kidnapped nineteen-year-old marine, raped her using a tree limb, beat her, and killed her, and was sentenced to death for her murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture, and 2) committed during kidnapping and rape).
- *State v. Bane*, 57 S.W.3d 411 (Tenn. 2001) (defendant broke into victim's house, robbed him, killed him by gagging him, placing a plastic bag over his head, tying an electrical cord around his neck, and submerging him in a bathtub full of water, using a plunger over his face to keep his head underwater, and was sentenced to death for his murder; jury found 2 aggravators – 1) murder was especially atrocious or cruel in that it involved torture or depravity of mind, and 2) committed for the purpose of avoiding arrest).
- *State v. Banks*, 271 S.W.3d 90 (Tenn. 2008) (defendant entered house of acquaintance and asked to use the phone, shot acquaintance three times, robbed house, then re-entered house to shoot friend of acquaintance execution-style, and was sentenced to death for his murder; jury found 2 aggravators – 1) murder committed for the purpose of avoiding arrest, and 2) committed during robbery).
- *State v. Berry*, 141 S.W.3d 549 (Tenn. 2004) (defendant robbed two male victims of clothing, jewelry, weapons and a car, kidnapped them, forced them to strip naked, and shot them multiple times in the head, and was sentenced to death for the murders; jury found 3 aggravators as to each murder– 1) prior violent felony conviction, 2) murders committed for the purpose of avoiding arrest, and 3) committed during robbery and kidnapping).
- *State v. Black*, 815 S.W.2d 166 (Tenn. 1991) (defendant shot at close range and killed his girlfriend and her two daughters, ages six and nine, and was sentenced to death for the six- year-old's murder; jury found 6 aggravators – 1) victims less than twelve years of age, 2) prior violent felony conviction, 3) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 4) murder committed for the purpose of avoiding arrest, 5) committed during robbery, and 6) constituted mass murder).
- ** State v. Bland*, 958 S.W.2d 651 (Tenn. 1997) (defendant shot witness to his robbery in the leg, chased him on foot, trapped him under a truck, then shot him several more times killing him, and was sentenced to death for his murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).

- * *State v. Burns*, 979 S.W.2d 276 (Tenn. 1998) (defendant approached four young men sitting in car in driveway, robbed them of jewelry and money, then opened fire killing two of the men, and was sentenced to death for one of the murders; jury found 1 aggravator – defendant knowingly created a great risk of death to two or more persons other than the victim murdered).
- *State v. Carruthers*, 35 S.W.3d 516 (Tenn. 2000) (defendant planned and carried out mass murders by injuring the three victims then burying them alive beneath a casket in the local cemetery, and was sentenced to death for all three murders; jury found 4 aggravators as to each murder – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, 3) committed during kidnapping and robbery, and 4) constituted mass murder).
- *State v. Carter*, 114 S.W.3d 895 (Tenn. 2003) (defendant planned to rob drug dealers, and upon learning he had the wrong apartment, he kicked in the door of the family of three anyway, raped the wife, shot the wife and husband at close range with a sawed-off shotgun in front of their three-year-old daughter, and was sentenced to death for both murders; jury found 2 aggravators as to each murder – 1) prior violent felony conviction, and 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *State v. Caruthers*, 676 S.W.2d 935 (Tenn. 1984) (defendant picked up a man and woman hitchhiking along the road, robbed them, forced them into the trunk of the car, raped the woman and drowned her by placing a large rock on top of her head, and shot, repeatedly stabbed, and attempted to drown the man, and was sentenced to death for the woman's murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed for the purpose of avoiding arrest, and 4) committed during kidnapping and robbery).
- * *State v. Cauthern*, 967 S.W.2d 726 (Tenn. 1998) (defendant entered victims' house after cutting phone lines, robbed them, woke them up, raped the woman, strangled the man and woman killing them both, and was sentenced to death for the murder of the woman; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- * *State v. Chalmers*, 28 S.W.3d 913 (Tenn. 2000) (defendant drove around with two others looking for someone to rob, used guns to hold up two men, forced them to strip, robbed them of three dollars, shot one of the men five times killing him, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).

- *≈ State v. Coe*, 655 S.W.2d 903 (Tenn. 1983) (defendant lured eight-year-old girl into his car, drove to a deserted road, raped her, choked her, stabbed her in the neck with a pocketknife, watched her bleed and jerk for awhile, then left her to die beside the road, and was sentenced to death for her murder; jury found 4 aggravators – 1) victim less than twelve years of age, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed for the purpose of avoiding arrest, and 4) committed during rape and kidnapping).
- * *State v. Cole*, 155 S.W.3d 885 (Tenn. 2005) (defendant and victim went to buy drugs, got into an argument about debt victim owed Defendant, Defendant shot victim twice in the head in secluded area of residential neighborhood, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- * *State v. Coleman*, 619 S.W.2d 112 (Tenn. 1981) (defendant shot and killed victim inside victim’s vehicle, ransacked the vehicle and robbed the victim, and was sentenced to death for his murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder committed during robbery – but, on appeal, court found 2nd aggravator to be invalid, holding the 1st aggravator to be enough to support the sentence).
- *State v. Cone*, 665 S.W.2d 87 (Tenn. 1984) (defendant robbed a jewelry store, engaged police in a high speed chase, shot a police officer and a citizen, held up two other citizens, broke into the home of the two elderly victims, ransacked and robbed the home, beat and mutilated the victims, and was sentenced to death for both murders; jury found 3 aggravators as to each murder – 1) prior violent felony convictions, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, and 3) committed for the purpose of avoiding arrest).
- *State v. Lemaricus Davidson*, Knox County (2009) (case not available) (defendant involved in notorious “torture-slaying” of two young people; convicted of murder, rape, facilitation of aggravated rape, kidnapping, and robbery).
- *State v. Davidson*, 121 S.W.3d 600 (Tenn. 2003) (defendant gave victim a ride from a bar, kidnapped, killed and severely mutilated her, and was sentenced to death for her murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder committed during kidnapping, and 3) mutilation of victim’s body after death).
- *State v. Davis*, 141 S.W.3d 600 (Tenn. 2004) (defendant, involved in gang violence, shot one victim seven times and the other five times killing them both, and was sentenced to death for the murders; jury found 3 aggravators as to each murder – 1) prior violent felony conviction, 2) murder committed for the purpose of avoiding arrest, and 3) committed during kidnapping and robbery).
- * *State v. Dellinger*, 79 S.W.3d 458 (Tenn. 2002) (defendant burned victim’s trailer, shot victim in the back of the head, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).

- *State v. Duncan*, 698 S.W.2d 63 (Tenn. 1985) (defendant robbed a convenient mart, raped the cashier, then slit her throat three times, and was sentenced to death for her murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, and 2) committed during rape and robbery).
- * *State v. Faulkner*, 154 S.W.3d 48 (Tenn. 2005) (defendant bludgeoned his wife with a frying pan and a metal horseshoe, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- * *State v. Hall*, 8 S.W.3d 593 (Tenn. 1999) (defendant beat, strangled and drowned his wife, and was sentenced to death for her murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *State v. Hall*, 958 S.W.2d 679 (Tenn. 1997) (defendant threw gasoline on his girlfriend and burned her in her car, and was sentenced to death for her murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) committed during arson).
- *State v. Hall*, 976 S.W.2d 121 (Tenn. 1998) (defendant, along with co-defendant, escaped from prison, broke into house of elderly couple, shot husband and shot and repeatedly stabbed woman killing both, and was sentenced to death for the woman’s murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed for purpose of avoiding arrest, and 4) committed during burglary).
- *State v. Henderson*, 24 S.W.3d 307 (Tenn. 2000) (defendant smuggled a gun into dentist’s office, kidnapped dentist and receptionist, shot deputy in the back of the head at close range, and was sentenced to death for his murder; jury found 4 aggravators – 1) defendant knowingly created a great risk of death to two or more persons other than the victim murdered, 2) murder committed for the purpose of avoiding arrest, 3) committed during escape from lawful custody, and 4) committed against law enforcement officer engaged in official duties).
- * ≈ *State v. Henley*, 960 S.W.2d 572 (Tenn. 1997) (defendant shot elderly couple, poured gasoline on them and lit them on fire, and was sentenced to death for both murders; jury found 1 aggravator as to each murder – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Henretta*, 2009 WL 1025828, Tenn. Crim. App., Apr. 14, 2009 (No. E2007-01750-CCA-R3-DD) (defendant entered thrift store after hours, robbed, raped and violently stabbed employee, and was sentenced to death for her murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed for the purpose of avoiding arrest, and 4) committed during rape, kidnapping and robbery).

- *State v. Hester*, 2009 WL 275760, Tenn. Crim. App., Feb. 5, 2009 (No. E2006-01904-CCA-R3-DD) (defendant bound and gagged his ex-wife and elderly man in mobile home, threatened them with knife, then set mobile home on fire killing the man, and was sentenced to death for his murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) victim over 70 years of age).
- *State v. Hines*, 919 S.W.2d 573 (Tenn. 1995) (defendant stabbed a motel maid to death, then inserted flat object through her vagina into her abdomen, and was sentenced to death for her murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, and 3) committed during robbery).
- *State v. Hodges*, 944 S.W.2d 346 (Tenn. 1997) (defendant, a male prostitute, bound and gagged man who propositioned him, robbed him, and strangled him, and was sentenced to death for his murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 3) committed during robbery).
- ≈ *State v. Holton*, 126 S.W.3d 845 (Tenn. 2004) (defendant systematically shot his four children ages four, six, ten and twelve in his garage, and was sentenced to death for all four murders; jury found 1 aggravator as to each of the four murders – the murders constituted mass murder – and a second aggravator as to the murders of the four, six, and ten-year-old children – victim less than 12 years of age).
- *State v. Howell*, 868 S.W.2d 238 (Tenn. 1993) (defendant shot a convenience store clerk at close range killing him, then shot another woman and stole her car, and was sentenced to death for the clerk's murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder committed during larceny).
- *State v. Hugueley*, 185 S.W.2d 356 (Tenn. 2006) (defendant stabbed correctional counselor 36 times from behind with a homemade weapon until the handle of the weapon broke off, and was sentenced to death for his murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, 3) committed while defendant in a place of lawful confinement, and 4) victim was a corrections employee).
- * *State v. Hutchison*, 898 S.W.2d 161 (Tenn. 1994) (defendant conspired to kill victim to collect insurance money, hired acquaintances to kill victim by luring him on a fishing trip then drowning him, and was sentenced to death for the murder; jury found 1 aggravator – defendant employed another to commit murder for remuneration).

- *Irick v. State*, 973 S.W.2d 643 (Tenn. 1998) (defendant raped seven-year-old girl and suffocated her, and was sentenced to death for her murder; jury found 4 aggravators – 1) victim less than twelve years of age, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed for purpose of avoiding arrest, and 4) committed during rape).
- *State v. Ivy*, 188 S.W.3d 132 (Tenn. 2006) (defendant shot his ex-girlfriend at close range five times, and was sentenced to death for her murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder committed for purpose of avoiding arrest).
- *State v. Johnson*, 743 S.W.2d 154 (Tenn. 1987) (defendant strangled and suffocated his wife with a plastic bag, then placed her body in a van and left it in a parking lot, and was sentenced to death for her murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder was especially cruel and involved torture or depravity of mind).
- *≈ State v. Johnson*, 632 S.W.2d 542 (Tenn. 1982) (defendant robbed a convenient market, confined the owner, his twelve-year-old son, and an employee behind the counter, shot all three of them killing the boy, then shot a cab driver and his passenger killing them both, and was sentenced to death for all three murders; jury found 3 aggravators as to each murder – 1) murder committed for the purpose of avoiding arrest, 2) defendant knowingly created a great risk of death to two or more persons other than the victim murdered, and 3) committed during robbery).
- *Nickolus Johnson*, (case not available) (defendant ambushed police officer in November 2004, shot him in the face, and was sentenced to death for his murder on April 27, 2007).
- *Henry Jones*, (case not available) (defendant stabbed couple to death in their home in August 2003, and was sentenced to death for their murders on May 14, 2009).
- *State v. Jones*, 789 S.W.2d 545 (Tenn. 1990) (defendant bound, gagged and blindfolded the victim, stabbed him six times, then watched victim go into convulsions and bleed from his nose and mouth, and was sentenced to death for his murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 3) committed during robbery).
- *State v. Jordan*, 2009 WL 1607902, Tenn. Crim. App., June 9, 2009 (No. W2007-01272CCA-R3-DD) (defendant entered his wife's workplace, shot wife and two men killing them, shot and injured two other men, and was sentenced to death for the three murders; jury found 6 aggravators – 1) defendant knowingly created a great risk of death to two or more persons other than the victim murdered, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, 3) murder committed for the purpose of avoiding arrest, 4) knowingly committed while defendant had a substantial role in committing or attempting to commit first degree murder, 5) constituted mass murder, and 6) defendant mutilated body of victim after death).

- *State v. Keen*, 31 S.W.3d 196 (Tenn. 2000) (defendant raped his fiancée's eight-year-old daughter, strangled her with a shoelace, and threw her in a river, and was sentenced to death for her murder; jury found 3 aggravators – 1) victim under twelve years of age, 2) especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 3) committed during rape).
- * *State v. Keough*, 18 S.W.3d 175 (Tenn. 2000) (defendant stabbed and killed his estranged wife and stabbed her acquaintance after finding them together in a bar, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- *King v. State*, 989 S.W.2d 319 (Tenn. 1999) (defendant kidnapped victim after she accused him of raping her, forced her into trunk of her car, drove her to remote location, then shot her execution style, and was sentenced to death for her murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed during kidnapping, and 4) committed for purpose of avoiding arrest).
- * *State v. Kiser*, 284 S.W.3d 227 (Tenn. 2009) (defendant went to a fruit stand to burn it down, hid behind his truck when a police officer approached, then shot the police officer several times, and was sentenced to death for his murder; jury found 1 aggravator – defendant knowingly murdered law enforcement officer engaged in official duties).
- *State v. Leach*, 148 S.W.3d 42 (Tenn. 2004) (defendant brutally beat, strangled and raped two elderly women, stabbed them with a pair of scissors, and was sentenced to death for their murders; jury found 3 aggravators as to each murder – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 3) committed during rape – and a 4th aggravator as to one of the murders – victim over 70 years of age).
- *State v. Mann*, 959 S.W.2d 503 (Tenn. 1997) (defendant broke into home of 63-year-old neighbor, brutally raped her, bludgeoned her, and stabbed her multiple times in the chest, and was sentenced to death for her murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) committed during robbery).
- *State v. McKay*, 680 S.W.2d 447 (Tenn. 1984) (defendant, along with co-defendant, robbed sundry shop, shooting three men and killing two, even after they had complied with defendant's demands, and was sentenced to death for the two murders; jury found 4 aggravators, but they are not specified in the opinion).
- * *State v. McKinney*, 74 S.W.3d 291 (Tenn. 2002) (defendant returned to night club following an altercation with the security guard, shot the security guard at close range in the back of the head, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).

- * *State v. McNish*, 727 S.W.2d 490 (Tenn. 1987) (defendant bludgeoned 70-year-old neighbor and was sentenced to death for her murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- * *State v. Middlebrooks*, 995 S.W.2d 550 (Tenn. 1999) (defendant, along with two co-defendants, chased down fourteen-year-old black boy, beat him profusely, burned him, carved an “X” in his chest, urinated on him and in his mouth, gagged him with a urine-soaked rag, and stabbed him in the chest, and was sentenced to death for his murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- * *State v. Miller*, 674 S.W.2d 279 (Tenn. 1984) (defendant struck mentally challenged 23-year-old victim in the head with a fire poker, then tied her up, stabbed her, and dragged her into the woods, and was sentenced to death for her murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Morris*, 24 S.W.3d 788 (Tenn. 2000) (defendant broke into neighbors’ house, shot man in the head killing him, raped woman repeatedly, and tied up fifteen-year-old girl, beat her, and stabbed her 37 times with a steak knife and a butcher knife, and was sentenced to death for her murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) committed during kidnapping and robbery).
- * *State v. Nesbit*, 978 S.W.2d 872 (Tenn. 1998) (defendant tortured the victim by various means including burning her with a curling iron and an open flame and striking the soles of her feet with a rod, then shot her in the head and left her four young children alone in the house with her dead body, and was sentenced to death for her murder; jury found 1 aggravator - murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *State v. Nichols*, 877 S.W.2d 722 (Tenn. 1994) (defendant broke into victim’s house, raped her, hit her in the head with a two-by-four, and was sentenced to death for her murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) committed during commission of a felony).
- * *State v. Odom*, 137 S.W.3d 572 (Tenn. 2004) (defendant forced 77-year-old victim into the backseat of her vehicle, raped her, then stabbed her repeatedly with a knife, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).

- *State v. Payne*, 791 S.W.2d 10 (Tenn. 1990) (defendant broke into apartment of woman and her two children, stabbed the woman 42 times and the two-year-old girl nine times killing them both, and stabbed the three-year-old boy several times severely injuring him, and was sentenced to death for the two murders; jury found 2 aggravators as to the woman's murder – 1) defendant knowingly created a great risk of death to two or more persons other than the victim murdered, and 2) murder was especially heinous, atrocious, cruel – and 1 aggravator as to the girl's murder – victim less than 12 years of age).
- *State v. Pike*, 978 S.W.2d 904 (Tenn. 1998) (defendant, along with another individual, beat a fellow student for 30 minutes to an hour, bludgeoning her with pieces of asphalt, forcing her to remove her shirt and bra so she would not escape, cutting her in the stomach and throat with a box cutter, carving a pentagram into her chest, then leaving her face-down in a pile of debris, because defendant “had just felt mean that day,” and was sentenced to death for her murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) committed for purpose of avoiding arrest).
- *State v. Porterfield*, 746 S.W.2d 441 (Tenn. 1988) (defendant bludgeoned victim to death, striking him at least 21 times with a blunt object such as a tire iron, after having been hired by the victim's wife to commit the murder in exchange for \$17,000, and was sentenced to death for his murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) defendant committed the murder for remuneration, and 3) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Powers*, 101 S.W.3d 383 (Tenn. 2003) (defendant followed victim home from a casino in Tunica to Memphis, kidnapped her, forced her into his car, robbed her of money and jewelry, drove her to Mississippi, then shot her in the head and left her in an abandoned house, and was sentenced to death for her murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder committed for purpose of avoiding arrest, and 3) committed during kidnapping).
- *Corinio Pruitt* (case not available) (defendant carjacked and murdered 79-year-old woman in August 2005, and was sentenced to death for her murder on March 1, 2008).
- *Quintero v. State*, 2008 WL 2649637, Tenn. Crim. App., July 7, 2008 (No. M2005-02959-CCA-R3-PD) (defendant, along with co-defendant, escaped from prison, broke into house of elderly couple, shot husband and shot and stabbed woman killing both, and was sentenced to death for the woman's murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 3) committed for purpose of avoiding arrest, and 4) committed during burglary).

- *State v. Reid*, 213 S.W.3d 792 (Tenn. 2006) (defendant entered McDonald's restaurant after hours, robbed the safe, forced the four employees into a storage area, shot and killed three of them execution style, stabbed and kicked the fourth until he played dead, and was sentenced to death for the three murders; jury found 4 aggravators as to each murder— 1) prior violent felony conviction, 2) murder committed for the purpose of avoiding arrest, 3) committed during robbery; and 4) constituted mass murder).
- *State v. Rice*, 184 S.W.3d 646 (Tenn. 2006) (defendant lured his wife's thirteen-year-old daughter into the woods, raped her and stabbed her repeatedly, then left her body in the woods to decompose, and was sentenced to death for her murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 3) committed during rape).
- * *State v. Rimmer*, 250 S.W.3d 12 (Tenn. 2008) (defendant murdered his ex-girlfriend whose testimony had sent him to prison for assault and rape, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Robinson*, 146 S.W.3d 469 (Tenn. 2004) (defendant, along with fellow gang members, interrogated and beat to the point of mutilation an innocent victim for two hours because they thought he was a spy for another gang, then took him to a park and shot him, and was sentenced to death for his murder; jury found 2 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) committed during kidnapping).
- *State v. Rogers*, 188 S.W.3d 593 (Tenn. 2006) (defendant lured nine-year-old girl into his car saying he was a police officer, raped her, killed her and mutilated her body, and was sentenced to death for her murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder committed during kidnapping and rape, 3) committed for purpose of avoiding arrest, and 4) victim under twelve years of age).
- *State v. Rollins*, 188 S.W.3d 553 (Tenn. 2006) (defendant robbed 81-year-old owner of bait shop and stabbed him 27 times, and was sentenced to death for his murder; jury found 5 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, 3) committed for purpose of avoiding arrest, 4) committed during robbery, and 5) victim over 70 years of age).
- *Sample v. State*, 82 S.W.3d 267 (Tenn. 2002) (defendant, along with co-defendant, robbed sundry shop, shooting three men and killing two, even after they had complied with defendant's demands, and was sentenced to death for the two murders; jury found 3 aggravators as to each murder – 1) defendant knowingly created a great risk of death to two or more persons other than the victim murdered, 2) murder committed for purpose of avoiding arrest, and 3) committed during commission of a felony).

Appendix 1

- *State v. Schneiderer*, 2009 WL 961787, Tenn. Crim. App., Apr. 9, 2009 (No. M2007-01922-CCA-R3-DD) (defendant strangled fellow inmate with a sock; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder committed while defendant was in lawful custody).
- *Hubert Sexton*, (case not available) (defendant committed first degree murder in May 2000, and was sentenced to death on June 30, 2001).
- *State v. Sims*, 45 S.W.3d 1 (Tenn. 2001) (defendant broke into victim's house, robbed him, beat him in the head and body with a blunt object, shot him in the head, and was sentenced to death for his murder; jury found 4 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel, 3) committed for purpose of avoiding arrest, and 4) committed during burglary).
- * *State v. Smith*, 993 S.W.2d 6 (Tenn. 1999) (defendant, along with a co-defendant, robbed two grocery stores, shooting three people and killing two of them, and was sentenced to death for one of the murders; jury found 1 aggravator – prior violent felony conviction).
- *State v. Smith*, 868 S.W.2d 561 (Tenn. 1993) (defendant brutally murdered his estranged wife and her two sons ages thirteen and sixteen by shooting them, stabbing them with an ice pick and a knife, and slashing their throats, and was sentenced to death for all three murders; jury found 2 aggravators as to all three murders – 1) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death, and 2) constituted mass murder – and 2 additional aggravators as to each boy's murder – 1) committed for purpose of avoiding arrest, and 3) committed during felony).
- * *State v. Stephenson*, 195 S.W.3d 574 (Tenn. 2006) (defendant hired a man to kill his wife, who did so by luring her to a secluded area under false pretenses, then shooting her at close range through the windshield of her car, and was sentenced to death for her murder; jury found 1 aggravator – defendant employed another to commit murder for remuneration).
- *State v. Stevens*, 78 S.W.3d 817 (Tenn. 2002) (defendant hired an acquaintance to kill his wife and mother-in-law, gave the killer detailed instructions on how to commit the murders, killer stabbed and strangled the victims, and defendant was sentenced to death for the murders; jury found 2 aggravators as to each murder – 1) prior violent felony conviction, and 2) defendant employed another to commit murder for remuneration).
- *State v. Stout*, 2000 WL 202226, Tenn. Crim. App., Feb. 21, 2000 (No. 02C01-9812-CR-00376) (defendant kidnapped victim, forced her into the backseat of her car, drove her to a secluded area, shot her in the head, then stole her car, and was sentenced to death for her murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder committed for purpose of avoiding arrest, and 3) committed during kidnapping and robbery).

- * *Strouth v. State*, 999 S.W.2d 759 (Tenn. 1999) (defendant murdered the owner of a clothing store by bludgeoning him and slitting his throat from ear to ear causing him to bleed to death, then robbed him, and was sentenced to death for his murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Suttles*, 30 S.W.3d 252 (Tenn. 2000) (defendant stalked estranged girlfriend, cornered her in taco bell parking lot, stabbed her repeatedly and slashed her throat in front of her fifteen-year-old daughter, and was sentenced to death for her murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *Sutton v. State*, 1999 WL 423005, Tenn. Crim. App., June 25, 1999 (No. 03C01-9702-CR-00067) (defendant stabbed fellow inmate 38 times in the chest and neck, and was sentenced to death for his murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder was especially heinous, atrocious, cruel, and 3) committed while defendant in a place of lawful confinement).
- * *State v. Sutton*, 2006 WL 1472542, Tenn. Crim. App., May 30, 2006 (No. E2004-02305-CCA-R3-PD) (defendant, along with co-defendant, burned victim's trailer, and shot victim in the back of the head, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Thacker*, 164 S.W.3d 208 (Tenn. 2005) (defendant stabbed owner of wrecker service, then stole his truck, and was sentenced to death for his murder; jury found 2 aggravators – 1) murder committed for the purpose of avoiding arrest, and 2) committed during robbery).
- * *State v. Thomas*, 158 S.W.3d 361 (Tenn. 2005) (defendant ambushed armored-truck guard outside of Walgreens, shot him in the back of the head, stole the guard's deposit bag, escaped in a get-away car driven by co-defendant, and was sentenced to death for the guard's murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Thompson*, 768 S.W.2d 239 (Tenn. 1989) (defendant kidnapped victim at knifepoint in Wal-Mart parking lot, forced her to drive to isolated area, stabbed her four times, stole her car and was sentenced to death for her murder; jury found 3 aggravators – 1) murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind, 2) committed to avoid prosecution, and 3) committed during kidnapping).
- *State v. Van Tran*, 864 S.W.2d 465 (Tenn. 1993) (defendant robbed a restaurant, beating an elderly woman and knocking her unconscious, and shooting and killing three other employees, and was sentenced to death for one of the murders; jury found 2 aggravators – 1) murder was especially cruel in that it involved depravity of mind, and 2) constituted mass murder).

- *State v. West*, 767 S.W.2d 387 (Tenn. 1989) (defendant, along with a co-defendant, laid in wait outside victims' house until husband/father left for work, entered house, raped mother and daughter at knife-point eventually stabbing both victims to death, and was sentenced to death for both murders; jury found 3 aggravators as to each murder – 1) murder was especially heinous, atrocious, cruel, 2) committed for purpose of avoiding arrest, and 3) committed during kidnapping and rape).
- *State v. Willis*, Washington County (2010) (case not available) (defendant convicted of first degree murder of a teenaged couple, he received death sentences, for premeditated first-degree murder of each teen and for felony first-degree murder because one killing was committed, according to the jury, in the commission of kidnapping).
- ≈ *State v. Workman*, 667 S.W.2d 44 (Tenn. 1984) (defendant robbed a Wendy's restaurant, then shot two police officers in the parking lot as he was fleeing, killing one of them, and was sentenced to death for the murder; jury found 5 aggravators – 1) defendant knowingly created a great risk of death to two or more persons other than the victim murdered, 2) murder committed during robbery, 3) committed for purpose of avoiding arrest, 4) committed while defendant was in lawful custody, and 5) committed against law enforcement officer engaged in official duties).
- * *Wright v. State*, 1994 WL 115955, Tenn. Crim. App., April 7, 1994 (No. 01C01-9105-CR-00149) (defendant shot and killed two acquaintances while engaged in drug trafficking, and was sentenced to death for one of the murders; jury found 1 aggravator – murder committed while defendant engaged in or fleeing after committing another first degree murder).
- *State v. Young*, 196 S.W.3d 85 (Tenn. 2006) (while trying to evade apprehension after kidnapping a man and killing another, defendant carjacked victim at knifepoint, forced her into the passenger seat, drove her to a remote location, stabbed her violently in the back, dragged her twenty yards, concealed her under a sheet of tin, left her to die and stole her car, and was sentenced to death for her murder; jury found 3 aggravators – 1) prior violent felony conviction, 2) murder committed for purpose of avoiding arrest, and 3) committed during theft).
- *State v. Zagorski*, 1997 WL 311926, Tenn. Crim. App., June 6, 1997 (No. 01C01-9609-CC-00397) (defendant lured two men into the woods under a pretense of transacting a drug deal, shot them, slit their throats, and robbed them, and was sentenced to death for their murders; jury found 2 aggravators as to each murder – 1) murder was especially cruel in that it involved torture or depravity of mind, and 2) committed during robbery).

Appendix 2

Summary of Tennessee Fatal Burglary Cases

SUMMARY OF TENNESSEE FATAL BURGLARY CASES

The following cases were revealed through a search of Westlaw and Lexis for Tennessee defendants convicted of murder and burglary, where the defendant was responsible for killing an innocent victim while invading a home and was sentenced by a jury to less than death.

- *Adams v. State*, 2003 WL 103205, Tenn. Crim. App., Jan. 9, 2003 (No. W2001-02488-CCA-R3-PC) (defendant entered occupied home armed with a gun and shot occupant; sentenced in 1997 to life in prison).
- *State v. Anderson*, 2003 WL 1872641, Tenn. Crim. App., Apr. 11, 2003 (No. W2001-02371-CCA-R3-CD,) (defendant entered during night while occupant was asleep; beat victim to death and then left semen on bed sheets; sentenced in 2001 to life in prison).
- *State v. Arias*, 2006 WL 2277667, Tenn. Crim. App., Aug. 9, 2006 (No. E2005-01700-CCA-R3-CD) (after publicly commenting on wanting to kill her, defendant broke into victim's home, stabbed her in the neck and left her to bleed to death; sentenced to life in prison).
- *State v. Best*, 2000 WL 1387997, Tenn. Crim. App., Sept. 26, 2000 (No. E1999-00120-CCA-R3-CD) (defendant entered home armed with a tire iron while victim was asleep inside; hit victim with tire iron 30-40 times; sentenced to life in prison).
- *Blackwood v. State*, 2006 WL 3613599, Tenn. Crim. App., Dec. 8, 2006 (No. W2005-01548-CCA-R3-PC) (defendant entered home armed and while victims were at home, shooting and killing one and shooting at others; sentenced in 1997 to life in prison).
- *State v. Bogus*, 1998 WL 22031, Tenn. Crim. App., Jan. 22, 1998 (No. 02C01-9506-CC-00169) (defendant entered occupied home; strangled victim and stuffed her body in a closet; sentenced to life in prison).
- *State v. Bonds*, 2006 WL 2773455, Tenn. Crim. App., Sept. 28, 2006, (No. M2005-02546-CCA-R3-CD) (defendant entered occupied home armed with a gun and shot victim; sentenced to life in prison).
- *Brewster v. State*, 2008 WL 465268, Tenn. Crim. App., Feb. 21, 2008 (No. E2007-00605-CCA-R3-PC) (defendant entered occupied home and used occupant's gun to shoot him; sentenced in 2005 to life in prison).
- *State v. Brooks*, 1998 WL 754315, Tenn. Crim. App., Oct. 29, 1998 (No. 01C01-9510-CC-00324) (defendant entered occupied home armed with a gun and shot victim; sentenced to life in prison).
- *R. Brown v. State*, 2004 WL 193063, Tenn. Crim. App., Jan. 30, 2004 (No. M2002-02980-CCA-R3-PC) (defendant entered occupied home at night, armed with a gun, and shot occupant; sentenced to life with the possible of parole).

- *A. Brown v. State*, 2008 WL 4831221, Tenn. Crim. App. Nov. 5, 2008 (No. W2007-02402-CCA-R3-PC) (defendant entered occupied home and grabbed knife upon entry; stabbed victim with knives and ice-pick and pushed television onto his head; sentenced to life in prison).
- *Caldwell v. State*, 2004 WL 2544685, Tenn. Crim. App., Nov. 10, 2004 (No. E2003-02122-CCA-MR3-PC) (defendant entered occupied home; placed a nightcap in occupant's throat, resulting in suffocation; sentenced to life in prison).
- *State v. E. Campbell*, 2004 WL 508477, Tenn.Crim.App., Mar. 15, 2004 (No. M2003-00597-CCA-R3-CD) (defendant broke into 82-year-old victim's house, bound and gagged him, sealed a plastic bag over his head with duct tape killing him, and robbed him; sentenced to life in prison with the possibility of parole).
- *State v. K. Campbell*, 2007 WL 861161, Tenn. Crim. App., Mar. 23, 2007 (No. W2005-02810-CCA-R3-CD) (defendant laid in wait for over an hour for occupant to return; upon her return, defendant strangled her and stole her credit card; sentenced to life in prison).
- *State v. Cravens*, 1994 WL 444623, Tenn. Crim. App., Aug. 16, 1994 (No. 03C01-9309-CR-00319) (defendant entered occupied home at night and killed occupant before robbing her; sentenced to life in prison).
- *State v. Crump*, 2009 WL 723524, Tenn. Crim. App., Mar. 18, 2009, (No. M2006-02244-CCA-R3-CD) (defendant entered occupied home; raped and strangled occupant with lamp cord; sentenced in 2006 to life in prison).
- *State v. Ely*, 48 S.W.3d 710 (Tenn. 2001) (defendant and fellow gang member broke into occupied home in the middle of the night; beat 70-year old occupant to death with a brick before robbing him; sentenced to life in prison, but later granted a new trial so jury could be charged with lesser offenses of second-degree murder, reckless homicide, and criminally negligent homicide).
- *State v. Emesibe*, 2005 WL 711898, Tenn. Crim. App., Mar. 28, 2005 (No. M2003-02983-CCA-R3-CD) (defendant broke into occupied home armed with a gun; shot and killed two occupants; sentenced to life in prison).
- *State v. Gordon*, 1998 WL 44920, Tenn. Crim. App., Feb. 5, 1998 (No. 01C01-9611-CC-00495) (defendant broke into victim's home, cut phone lines, and waited for homeowner to return; upon return, defendant stabbed homeowner with scissors from the house; sentenced to life in prison).
- *State v. Hanna*, 1999 WL 689414, Tenn. Crim. App., Sept. 7, 1999 (No. 02C01-9806-CR-00165) (defendant broke into home occupied by family of four while armed with a gun; shot victim before ransacking house; sentenced to life in prison).
- *State v. Johnson*, 2000 WL 1278158, Tenn. Crim. App., Sept. 11, 2000 (No. E1999-02468-CCA-R3-CD) (defendant broke into occupied house armed with a knife and stabbed occupant; sentenced to life with the possibility of parole).

- *State v. Jones*, 2009 WL 1741509, slip op., Tenn. Crim. App. June 16, 2009 (No. W2008-00101-CCA-R3-CD) (defendant entered occupied apartment armed and masked; shot three occupants, killing one; sentenced to life with the possibility of parole).
- *State v. King*, 2003 WL 21339273, Tenn. Crim. App., May 15, 2003 (No. W2001-02823-CCA-R3-CD) (defendant entered occupied house armed with a gun and shot occupant; sentenced to life in prison).
- *State v. Lane*, 2005 WL 3116303, Tenn. Crim. App., Nov. 22, 2005 (No. W2004-01882-CCA-R3-PC) (defendant broke into home occupied by family of four while armed with a gun; shot victim before ransacking house; sentenced to life in prison).
- *Langford v. State*, 2008 WL 1700228, Tenn. Crim. App., Apr. 7, 2008 (No. W2006-02765-CCA-R3-PC) (defendant entered occupied apartment armed with a gun; shot into closet occupied by his girlfriend, her son, and another, killing one; sentenced to life in prison).
- *State v. Lawrence*, 154 S.W.3d 71 (Tenn. 2005) (defendant broke into occupied apartment, masked and armed with gun; forced victim's family members into back room, before taking victim to the kitchen and shooting him; sentenced to life in prison).
- *State v. Lillard*, 2009 WL 2951270, Tenn. Crim. App., Sept. 15, 2009 (No. M2008-00575-CCA-R3-CD) (defendant broke into victim's house in an attempt to steal guns from the victim and shot and killed the victim in the course of the robbery; sentenced to life in prison without the possibility of parole).
- *State v. Marsh*, 2005 WL 1950225, Tenn. Crim. App., Aug. 15, 2005 (No. M2004-00854-CCA-R3-CD) (defendant and accomplices broke into home armed with a gun and masked; shot and killed two occupants and shot two others multiple times before robbing the house; sentenced to life in prison).
- *State v. McBee*, 2009 WL 2615815, Tenn. Crim. App., Aug. 24, 2009 (No. W2007-01719-CCA-R3-CD) (defendant entered the house of victim's friend, held everyone at gun-point and forced them to strip naked and shot and killed victim in the course of the robbery; sentenced to life in prison).
- *Mullins v. State*, 2008 WL 5272573, slip op., Tenn. Crim. App. Dec. 19, 2008 (No. M2008-00332-CCA-R3-PC) (defendant entered occupied apartment at night and suffocated victim in bed before robbing her; sentenced in 2001 to life in prison).
- *State v. Nur*, 2005 WL1467904, Tenn. Crim. App., June 21, 2005 (No. W2004-01259-CCA-R3-CD) (defendant broke into occupied apartment armed with a gun; occupant chased defendant from apartment, and defendant shot and killed him; sentenced to life in prison).

- *State v. Palmer*, 2005 WL 3416319, Tenn. Crim. App., Dec. 9, 2005, (No. W2004-01748-CCA-R3-CD) (defendant entered victim's home at night, armed with a gun; shot victim 5-6 times before stealing car stereo and speakers the he was supposed to buy from her; sentenced to life in prison).
- *Patterson v. State*, 2006 WL 3093216, Tenn. Crim. App., Oct. 26, 2006 (No. M2004-01271-CCA-R3-PC) (defendant and accomplice broke into the home of two U.S. Army soldiers at night, while the couple slept, armed with guns, and after cutting the home's phone line; shot husband before raping and strangling the wife; sentenced to life in prison).
- *State v. Price*, 46 S.W.3d 785 (Tenn. Crim. App. 2000) (defendant broke into occupied apartment, hit victim with tire iron, stabbed him and poured lighter fluid on him, and then attempted to burn victim and apartment; sentenced to life in prison).
- *Sanders v. State*, 2008 WL 2053277, Tenn. Crim. App. May 12, 2008 (No. W2007-01089-CCA-R3-PC) (defendant entered occupied home, masked, and armed with a gun; shot and killed victim; sentenced to life in prison).
- *Sepulveda v. State*, 90 S.W.3d 633 (Tenn. 2002) (defendant broke into occupied home and beat 95-year old victim to death; sentenced to life in prison).
- *Skeen v. State*, 2006 WL 2354771, Tenn. Crim. App., Aug. 14, 2006 (No. E2005-01407-CCA-R3-PC) (defendant broke into home of victim while she was sleeping, blindfolded her with duct tape, bound her hands behind her back, led her to believe he was armed with a gun, raped her several times, kidnapped her and threw her over the side of a cliff killing her; sentenced to life in prison without the possibility of parole).
- *Taylor v. State*, 2008 WL 1699443, Tenn. Crim. App., Apr. 11, 2008 (No. M2007-01405-CCA-R3-HC) (defendant broke into occupied home at night after cutting the phone lines; suffocated 89 year-old victim before robbing her; sentenced in 1988 to life in prison).
- *State v. Tole*, 1984 Tenn. Crim. App. LEXIS 3022, Nov. 21, 1984 (defendant shot and killed victim during burglary of victim's home; sentenced to life in prison).
- *State v. Tucker*, 2008 WL 4648365, Tenn. Crim. App., Oct. 21, 2008 (No. W2007-02361-CCA-R3-CD) (defendant broke down the door of occupied apartment, armed with gun, for purpose of getting \$10 victim owed to him; when victim jumped off the couch, defendant shot and killed him; sentenced to life in prison).
- *State v. Walker*, 729 S.W.2d 272 (Tenn. Crim. App. 1986) (defendant broke into victim's house, shot the victim when he returned and surprised defendant, then shot victim a second time in the head to eliminate him as a witness; sentenced to life in prison).
- *Wesemann v. State*, 2005 WL 17430, Tenn. Crim. App., Jan. 4, 2005 (No. E2003-02256-CCA-R3-PC) (defendant entered occupied home at 5 a.m.; found shotgun inside house, which he used to shoot occupant while she slept; sentenced to life in prison).

- *State v. Williams*, 1998 WL 902586, Tenn. Crim. App., Dec. 29, 1998 (No. 02C01-9711-CR-00439) (defendant and accomplice broke into an occupied apartments in the middle of the night, in search of drugs and money; forced occupant to accompany them on break-in of neighboring apartment; when occupant attempted to hide, defendants beat him with a gun before shooting him multiple times; sentenced to life in prison).
- *State v. Woods*, 2007 WL 4530818, Tenn. Crim. App., Dec. 26, 2007 (No. W2006-00657-CCA-R3-CD) (defendant entered occupied home armed with a gun; shot and killed one victim and shot at another before abducting her; sentenced to life in prison).

Appendix 3

Schreane Criminal History Chart

David Schreane's Criminal History¹

Number	Name	Charges	Date(s) of Arrest or Offense	Date of Sentence	Length of Sentence
126570	Clarence D. Schreane	Robbery	10/18/73	02/07/74	5 years
151149	Clarence David Schreana [sic]	Burglary of Dwelling by Day (Guice)	03/19/82	02/02/83	4 years
151197	Clarence David Schreane	Burglary of Dwelling by Day	03/19/82 11/19/82	02/02/83	4 years
151199	Clarence David Schreane	Felonious Possession of Burglary Tools	03/19/82 11/19/82	02/02/83	1 year
151201	Clarence David Schreane	Burglary of Dwelling by Day (Mason)	03/19/82 11/19/82 02/01/82 ²	02/02/83	4 years
153576	Clarence D. Schreane	Robbery from Person as Range I, Standard Offender (Williams)	11/19/82 02/01/83 ³	02/02/83	4 years
152333	Clarence Schreme [sic]	Grand Larceny	02/02/83	02/14/84	3 years
154375	Clarence Schreme [sic]	Murder (Russell) Murder in Second Degree (plea)	02/02/83	02/14/84	20 years
154376	Clarence Screame [sic]	Burglary in Second Degree (Russell)	02/02/83	02/14/84	6 years
60935	Clarence Schreane	Paroled - September 6, 1990	00/00/00	00/00/00	n/a
191289	Clarence David Schreane	Child Abuse Indicted: 01/29/92 Sentenced: 06/18/92	08/06/91	06/18/92	6 months Pled guilty

¹ Clarence David Schreane is known as Clarence David Schreana, Clarence D. Schreane, Clarence Screame, Clarence Schreane, David L. Schreane on various documents.

² Taken into custody.

³ Taken into custody.

Number	Name	Charges	Date(s) of Arrest or Offense	Date of Sentence	Length of Sentence
192465	David L. Schreane	Theft of Property (Holiday Inn-East Ridge)	02/12/92	06/18/92	6 months
93W000 7995	David L. Schreane	Possession of Cocaine, Concealed Weapon, Expired Tag & Suspended license (Cobb County, GA)	06/08/93	00/00/00	
592859	Clarence David Schreane	Aggravated Burglary (Hinton)	08/20/93	00/00/00	
592860	Clarence David Schreane	Theft Under \$500	08/20/93	00/00/00	
025218	Clarence Schreane	Parole Revoked (Absconded Parole on 09/28/93)	09/23/93	00/00/00	
785196	Clarence David Schreane	Aggravated Burglary (Shannon) When arrested on this charge had outstanding warrants for Aggravated Burglary & Theft (#592859- 592860)	12/17/97	00/00/00	
785197	Clarence David Schreane	Theft over \$1,000 (Shannon)	12/17/97	00/00/00	
785316	Clarence David Schreane	Criminal Impersonation	12/18/97	12/23/97	6 months
785317	Clarence David Schreane	Weapon in Public Place	12/18/97	12/22/97	11 mo./29 days
1:98-cr- 61	Clarence D. Schreane	Federal Indictment - Felon in Possession Started serving federal sentence 5/10/02	07/29/98	10/05/01	Sentenced to 327 months

{2}

Number	Name	Charges	Date(s) of Arrest or Offense	Date of Sentence	Length of Sentence
242616	Clarence David Schreane	First Degree Murder (Count 1). Facts of case can be found at: <i>State v. Schreane</i> , No. E2005-00520-CCA-R 3CD, 2006 WL 891394 (Tenn. Crim. App. 2006)	12/18/02	11/17/04	Life with parole
242616	Clarence David Schreane	Especially Aggravated Robbery (Count 2) Sentenced as a Career Offender	01/24/05	1/24/05	60 years consecutive to federal sentence 1:98-cr-61

Notes:

- Schreane was in jail on four burglaries (#: 151197, 151199, 151201, 153576) when he was arrested and charged for Irene Russell murder;
- Paroled 09/06/90;
- While on parole committed burglaries & child abuse (and a 1991 murder although he wasn't charged until much later);
- Wanted in connection with burglary on 08/20/93;
- Parole was revoked on 09/23/93, absconded parole 08/28/93;
- When arrested for 12/17/97 burglary had outstanding warrants for 08/20/93 burglaries (#592859 - 592860);
- Federal prosecution for felon in possession/armed career criminal (1:98-cr-61) tied to # 785196-785197;
- While in jail in Hamilton County Schreane gave information on 1991 murder and was eventually charged with this murder. Received life w/ parole consecutive to his federal sentence of 327 months;
- Started serving federal sentence 05/10/02.

Appendix 4

Harrison Criminal History

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Criminal History

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--FLORIDA CCH RESPONSE--

ATN/ANONCCHINET/CCHINET/GRACE VILL

FC.DLE/1046150.PUR/P.ATN/ANONCCHINET/CCHINET/GRACE VILL

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 1

BECAUSE ADDITIONS OR DELETIONS MAY BE MADE AT ANY TIME,
A NEW COPY SHOULD BE REQUESTED WHEN NEEDED FOR FUTURE USE

- FLORIDA CRIMINAL HISTORY -

NAME	STATE ID NO.	FBI NO.	DATE REQUESTED
HARRISON, GARLAND RAY	FL-01046150		01/05/2007
SEX RACE BIRTH DATE HEIGHT WEIGHT EYES HAIR BIRTH PLACE SKIN DOC NO.			
M W 05/13/1939 5'08'' 147 BRO GRY TN			LGT 727196

--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 2

FINGERPRINT CLASS	SOCIAL SECURITY NO.	MISCELLANEOUS NO.	SCR/MRK/TAT
PI DI DM PM PO	XXX-XX-9873		TAT LF ARM
15 XO DI PI 21			

OCCUPATION	ADDRESS	CITY/STATE
WELDER	1509 BAYVIEW AVE	PANAMA CITY, FL

AKA DOB SOC SCR/MRK/TAT

HARRISON, ROY TAT L FGR

HARRISON, RAY GARLAND

TAT RF ARM
TAT UR ARM

--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 3

ARREST- 1 11/12/1962 OBTS NO.-
ARREST AGENCY-OCALA POLICE DEPARTMENT (FL0420100)
AGENCY CASE-6798 OFFENSE DATE-
CHARGE 001-VEHICLE THEFT-
AUTO
STATUTE/ORDINANCE- LEVEL-FELONY
DISP-TURNED OVER TO ANOTHER AGENCY
FL0420000 NO 16792 111362
CHARGE 002-CRIMINAL REGISTRATION (NOT AN ARREST)-

ARREST- 2 03/10/1975 OBTS NO.-
ARREST AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
AGENCY CASE-A19319 OFFENSE DATE-
--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 4

CHARGE 001-STOLEN PROPERTY-
BUY RECEIVE CONCEAL
003 CNTS,
STATUTE/ORDINANCE- LEVEL-FELONY
JUDICIAL-
AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
CHARGE 001 -COURT SEQ COURT NO.-
STATUTE/ORDINANCE- 3 CNT LEVEL-
COURT DATA-STOLEN PROPERTY-
BUY RECEIVE CONCEAL
STATUTE/ORDINANCE- LEVEL-FELONY
DISP DATE-06/09/1975 DISP-DISMISSED
CRT PROVISIONS- NO INFORMATION
--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 5

ARREST- 3 09/28/1975 OBTS NO.-
ARREST AGENCY-WASHINGTON COUNTY SHERIFF'S OFFICE (FL0670000)
AGENCY CASE-6380610 OFFENSE DATE-
CHARGE 001-RECEIVE STOLEN PROP-
CHARGE 002-MOVING TRAFFIC VIOL-
DETOUR SIGNS NOT OBEYED
STATUTE/ORDINANCE- LEVEL-MISDEMEANOR

ARREST- 4 11/25/1976 OBTS NO.-0000253110
ARREST AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
AGENCY CASE-A19319 OFFENSE DATE-
CHARGE 001-LARCENY-
--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 6

GRAND
STATUTE/ORDINANCE- LEVEL-FELONY
JUDICIAL-

AGENCY-DEPARTMENT OF CORRECTIONS
CHARGE 001 -COURT SEQ
COURT DATA-BURGLARY-
STATUTE/ORDINANCE-
DISP DATE-03/01/1983
CONFINEMENT-

COURT NO.-7600675 (FL037205C)
LEVEL-FELONY
DISP-ADJ WITHHELD

ARREST- 5 02/26/1977 OBTS NO.-0007679459
ARREST AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
AGENCY CASE-A19319 OFFENSE DATE-
--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 7

CHARGE 001-FAILURE TO APPEAR-
REF GRAND LARCENY

ARREST- 6 05/24/1977 OBTS NO.-0007762441
ARREST AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
AGENCY CASE-A19319 OFFENSE DATE-
CHARGE 001-TRAFFIC OFFENSE-
DWI

ARREST- 7 01/31/1983 OBTS NO.-
ARREST AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
AGENCY CASE-A19319 OFFENSE DATE-
CHARGE 001-FAILURE TO APPEAR-
--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 8

REF GND LARCENY BURG

ARREST- 8 08/22/1983 OBTS NO.-
ARREST AGENCY-PANAMA CITY POLICE DEPARTMENT (FL0030100)
AGENCY CASE-19317 OFFENSE DATE-
CHARGE 001-LARCENY-
GRAND
STATUTE/ORDINANCE- LEVEL-FELONY

JUDICIAL-
AGENCY-PANAMA CITY POLICE DEPARTMENT (FL0030100)
CHARGE 001 -COURT SEQ COURT NO.-83993
COURT DATA-LARCENY-
GRAND

--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 9

STATUTE/ORDINANCE-FL812.014 LEVEL-FELONY
DISP DATE-09/14/1984 DISP-CONVICTED
PROBATION-5Y
CRT PROVISIONS- 250 DOLS
COURT COSTS

ARREST- 9 01/04/1984 OBTS NO.-
ARREST AGENCY-BAY COUNTY SHERIFF'S OFFICE (FL0030000)
AGENCY CASE-A19319 OFFENSE DATE-
CHARGE 001-PROB VIOLATION-
REF BURG OF STRUCT

JUDICIAL-
AGENCY-NORTH FLORIDA RECEPTION MEDICAL CENTER (FL063025C)

--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 10

CHARGE 001 -COURT SEQ COURT NO.-
COURT DATA-BURGLARY-

STRUCT
STATUTE/ORDINANCE- LEVEL-FELONY
DISP DATE- DISP-CONVICTED
CONFINEMENT-3Y
CRT PROVISIONS- 99D

CREDITED WITH TIME SERVED

SUPERVISION OR CUSTODY-

AGENCY-NORTH FLORIDA RECEPTION MEDICAL CENTER (FL063025C)
AGENCY CASE-727196 STATUS-RECEIVED ,01/08/1985
AGENCY-DEPARTMENT OF CORRECTIONS (FL037205C)
AGENCY CASE-727196 STATUS-DISCHARGED FROM CRIMINAL ,05/28/1986

--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 11

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AS MANDATED BY FLORIDA STATUTE 119.071(5), FULL SOCIAL SECURITY NUMBERS ARE NOW EXEMPT FROM PUBLIC DISCLOSURE AND MAY BE DISCLOSED ONLY TO GOVERNMENTAL ENTITIES AND CERTAIN COMMERCIAL ENTITIES (UPON A SHOWING OF BUSINESS NECESSITY AS DEFINED BY THE LAW). FDLE WILL, HOWEVER, RELEASE THE LAST FOUR DIGITS OF THE SOCIAL SECURITY NUMBER.

--CONTINUED--

SID NUMBER: 1046150 PURPOSE CODE:P PAGE: 12

EXAMPLE: XXX XX 1234.
THIS CONTAINS FLORIDA RECORD ONLY.
UNKNOWN AS TO NATIONAL RECORD STATUS.
END OF RECORD

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Appendix 5

Summary of Tennessee Death Row Cases Where
Sentence Supported by One Aggravator

SUMMARY OF TENNESSEE DEATH ROW CASES BASED UPON ONE AGGRAVATING CIRCUMSTANCE

The following case summaries represent all Tennessee inmates currently on death row, or executed since the death penalty was reinstated in Tennessee in 1977, where the death sentence is supported by one aggravating circumstance.

≈ denotes cases in which the execution has been carried out.

- *State v. Bland*, 958 S.W.2d 651 (Tenn. 1997) (defendant shot witness to his robbery in the leg, chased him on foot, trapped him under a truck, then shot him several more times killing him, and was sentenced to death for his murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *State v. Burns*, 979 S.W.2d 276 (Tenn. 1998) (defendant approached four young men sitting in car in driveway, robbed them of jewelry and money, then opened fire killing two of the men, and was sentenced to death for one of the murders; jury found 1 aggravator – defendant knowingly created a great risk of death to two or more persons other than the victim murdered).
- *State v. Cauthern*, 967 S.W.2d 726 (Tenn. 1998) (defendant entered victims' house after cutting phone lines, robbed them, woke them up, raped the woman, strangled the man and woman killing them both, and was sentenced to death for the murder of the woman; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *State v. Chalmers*, 28 S.W.3d 913 (Tenn. 2000) (defendant drove around with two others looking for someone to rob, used guns to hold up two men, forced them to strip, robbed them of three dollars, shot one of the men five times killing him, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Cole*, 155 S.W.3d 885 (Tenn. 2005) (defendant and victim went to buy drugs, got into an argument about debt victim owed Defendant, Defendant shot victim twice in the head in secluded area of residential neighborhood, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Coleman*, 619 S.W.2d 112 (Tenn. 1981) (defendant shot and killed victim inside victim's vehicle, ransacked the vehicle and robbed the victim, and was sentenced to death for his murder; jury found 2 aggravators – 1) prior violent felony conviction, and 2) murder committed during robbery – but, on appeal, court found 2nd aggravator to be invalid, holding the 1st aggravator to be enough to support the sentence).

- *State v. Dellinger*, 79 S.W.3d 458 (Tenn. 2002) (defendant burned victim's trailer, shot victim in the back of the head, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Faulkner*, 154 S.W.3d 48 (Tenn. 2005) (defendant bludgeoned his wife with a frying pan and a metal horseshoe, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Hall*, 8 S.W.3d 593 (Tenn. 1999) (defendant beat, strangled and drowned his wife, and was sentenced to death for her murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- ≈ *State v. Henley*, 960 S.W.2d 572 (Tenn. 1997) (defendant shot elderly couple, poured gasoline on them and lit them on fire, and was sentenced to death for both murders; jury found 1 aggravator as to each murder – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Hutchison*, 898 S.W.2d 161 (Tenn. 1994) (defendant conspired to kill victim to collect insurance money, hired acquaintances to kill victim by luring him on a fishing trip then drowning him, and was sentenced to death for the murder; jury found 1 aggravator – defendant employed another to commit murder for remuneration).
- *State v. Keough*, 18 S.W.3d 175 (Tenn. 2000) (defendant stabbed and killed his estranged wife and stabbed her acquaintance after finding them together in a bar, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Kiser*, 284 S.W.3d 227 (Tenn. 2009) (defendant went to a fruit stand to burn it down, hid behind his truck when a police officer approached, then shot the police officer several times, and was sentenced to death for his murder; jury found 1 aggravator – defendant knowingly murdered law enforcement officer engaged in official duties).
- *State v. McKinney*, 74 S.W.3d 291 (Tenn. 2002) (defendant returned to night club following an altercation with the security guard, shot the security guard at close range in the back of the head, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. McNish*, 727 S.W.2d 490 (Tenn. 1987) (defendant bludgeoned 70-year-old neighbor and was sentenced to death for her murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Middlebrooks*, 995 S.W.2d 550 (Tenn. 1999) (defendant, along with two co-defendants, chased down fourteen-year-old black boy, beat him profusely, burned him, carved an “X” in his chest, urinated on him and in his mouth, gagged him with a urine-soaked rag, and stabbed him in the chest, and was sentenced to death for his murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).

- *State v. Miller*, 674 S.W.2d 279 (Tenn. 1984) (defendant struck mentally challenged 23-year-old victim in the head with a fire poker, then tied her up, stabbed her, and dragged her into the woods, and was sentenced to death for her murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Nesbit*, 978 S.W.2d 872 (Tenn. 1998) (defendant tortured the victim by various means including burning her with a curling iron and an open flame and striking the soles of her feet with a rod, then shot her in the head and left her four young children alone in the house with her dead body, and was sentenced to death for her murder; jury found 1 aggravator - murder was especially heinous, atrocious, cruel in that it involved torture or serious physical abuse beyond that necessary to produce death).
- *State v. Odom*, 137 S.W.3d 572 (Tenn. 2004) (defendant forced 77-year-old victim into the backseat of her vehicle, raped her, then stabbed her repeatedly with a knife, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Rimmer*, 250 S.W.3d 12 (Tenn. 2008) (defendant murdered his ex-girlfriend whose testimony had sent him to prison for assault and rape, and was sentenced to death for her murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Smith*, 993 S.W.2d 6 (Tenn. 1999) (defendant, along with a co-defendant, robbed two grocery stores, shooting three people and killing two of them, and was sentenced to death for one of the murders; jury found 1 aggravator – prior violent felony conviction).
- *State v. Stephenson*, 195 S.W.3d 574 (Tenn. 2006) (defendant hired a man to kill his wife, who did so by luring her to a secluded area under false pretenses, then shooting her at close range through the windshield of her car, and was sentenced to death for her murder; jury found 1 aggravator – defendant employed another to commit murder for remuneration).
- *Strouth v. State*, 999 S.W.2d 759 (Tenn. 1999) (defendant murdered the owner of a clothing store by bludgeoning him and slitting his throat from ear to ear causing him to bleed to death, then robbed him, and was sentenced to death for his murder; jury found 1 aggravator – murder was especially heinous, atrocious, cruel in that it involved torture or depravity of mind).
- *State v. Sutton*, 2006 WL 1472542, Tenn. Crim. App., May 30, 2006 (No. E2004-02305-CCA-R3-PD) (defendant, along with co-defendant, burned victim's trailer, and shot victim in the back of the head, and was sentenced to death for his murder; jury found 1 aggravator – prior violent felony conviction).
- *State v. Thomas*, 158 S.W.3d 361 (Tenn. 2005) (defendant ambushed armored-truck guard outside of Walgreens, shot him in the back of the head, stole the guard's deposit bag, escaped in a get-away car driven by co-defendant, and was sentenced to death for the guard's murder; jury found 1 aggravator – prior violent felony conviction).

- *Wright v. State*, 1994 WL 115955, Tenn. Crim. App., April 7, 1994 (No. 01C01-9105-CR-00149) (defendant shot and killed two acquaintances while engaged in drug trafficking, and was sentenced to death for one of the murders; jury found 1 aggravator – murder committed while defendant engaged in or fleeing after committing another first degree murder).

Appendix 6

Harbison v. State, Chattanooga Criminal Court,
Division II, No. 171319. Post-conviction transcript
p.94-95, testimony of William B. Mitchell Carter.

1 IN THE CRIMINAL COURT FOR HAMILTON COUNTY, TENNESSEE

2 AT CHATTANOOGA

3 DIVISION II

4
5 EDWARD JEROME HARBISON :

6
7 VS. : Case No. 171319

8
9 STATE OF TENNESSEE :

10
11 TRANSCRIPT OF THE EVIDENCE

12 Petition for Post-Conviction Relief

13
14 FOR THE PETITIONER:

15 GERALD TIDWELL
16 723 MCCALLIE AVENUE
17 CHATTANOOGA, TENNESSEE

18 JOHN MCCLARTY
19 18 PATTEN PARKWAY
20 CHATTANOOGA,, TENNESSEE

21 FOR THE RESPONDENT:

22 H.C. BRIGHT, III
23 ASSISTANT DISTRICT ATTORNEY GENERAL
24 HAMILTON COUNTY JUSTICE BUILDING
25 CHATTANOOGA, TENNESSEE

1 A That's right.

2 Q If you have sufficient interaction with them,
3 you can detect their mental state. What I'm trying to get
4 at is the level of interaction that you had with Mr.
5 Harbison and the level of interaction that he had with you.
6 Was there anything in that that suggested lack of competency
7 on his part?

8 A I thought I made the right judgment at the time.
9 If in fact there's some limitation on this man that escaped
10 my notice, that's I guess an issue for the Court to
11 determine as to whether I should have noticed something I
12 missed. All I can tell you is what I did and didn't see. I
13 didn't see the need for that and didn't do it at the time.
14 Now, then, you know, since then I've found out some things
15 that are disturbing to me a little bit. I'll be frank about
16 that. I mean those are disturbing things when I find out
17 that there had been problems in the family. Now, that fact
18 that are problems in the family doesn't mean there is a
19 problem with Jerome Harbison. What's disturbing though is
20 if there is such a problem and I missed it, then I would
21 certainly hope someone would be around to correct it.

22 Q I want to talk about that in just a moment.

23 A All I'm saying is you're asking me some
24 questions that I can't answer fully. I didn't see it. Mr.
25 Miller and I together did not see a problem that we thought

1 required the application of the Court for a psychologist,
2 you know. These experts, the Ackey case that's talked about
3 was later, you know, that came along later. You can ask the
4 Court, that doesn't guarantee the Court is necessarily going
5 to grant it. You've always got to make some showing. We
6 didn't have anything that we thought was sufficient to make
7 a showing. The question I guess would be the haunting
8 question that haunts every defense counsel, it haunts me
9 this moment, is did I miss something? I didn't see it is
10 all I can tell you. I can't tell you if that exists. If I
11 did miss something, then I hope the system will straighten
12 that out.

13 Q I understand that and that's obviously what
14 we're here about. What I'm trying to get to and I won't
15 belabor it but I just want to make sure. Can you think of
16 anything that you didn't do that you should have done to
17 enable you to see those problems if there were in fact
18 problems. Again, it's a hypothetical question.

19 A Hypothetically what could I have done? I guess
20 I could have gone and found out somehow that these other
21 things occurred. I didn't find it out from Mr. Harbison.
22 Mr. Miller didn't apparently find it out from the family. I
23 didn't find it out from the family. So if those things
24 existed, I guess you could say is there anything we could
25 have done to find it out? Well, I suppose there is. I